

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
CONDITIONAL USE PERMIT REPORT (#FCU-16-14)
JAMIE L. LEE
SEPTEMBER 6, 2016

This is a report to the Flathead County Board of Adjustment regarding a request from Jamie L. Lee, for a conditional use permit to use a detached structure as a showroom for a handmade jewelry business for a 'Home Occupation' on the subject property. The property is located within the Highway 93 North Zoning District and is zoned 'SAG-10.'

The Flathead County Board of Adjustment will hold a public hearing on the proposed conditional use on September 6, 2016 beginning at 6:00 P.M. in the 2nd floor conference room of the South Campus Building, 40 11th Street West, Kalispell. Documents pertaining to this file are available for public inspection in the Flathead County Planning and Zoning Office, also located on the second floor of the South Campus Building.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

The proposed land use is not located within the advisory jurisdiction of a Land Use Advisory Committee.

B. Board of Adjustment

This space is reserved for an update regarding the September 6, 2016 Flathead County Board of Adjustment review of the proposal.

II. GENERAL INFORMATION

A. Application Personnel

i. Landowner and Applicant

Jamie L. Lee
120 Highland Drive
Kalispell, MT 59901

B. Property Location and Size

The subject property is located at 120 Highland Drive north of Kalispell and east of Hwy 93. (see Figure 1 below). The property is approximately 4.8 acres in size and can be legally described as Tract 4EE in L 1 in Section 18, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.

C. Existing Land Use(s) and Zoning

The property is located within the Highway 93 North Zoning District and is zoned 'SAG – 10 Suburban Agricultural,' a designation intended to, *"Provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development"* [Section 3.07.010 Flathead County Zoning Regulations (FCZR)].

The property is currently contains the applicant's house, an attached garage, and a detached shed that the applicant is proposing to use as a showroom with the issuance of this permit. The property is open and relatively flat.

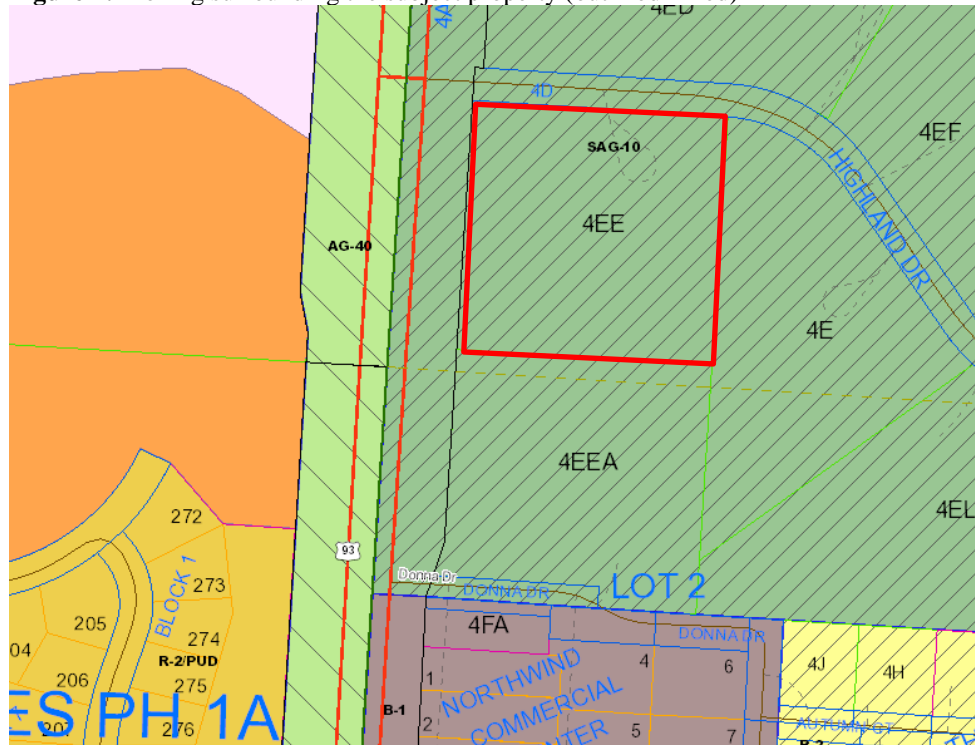
Figure 1: Subject property (outlined in red)



D. Adjacent Land Use(s) and Zoning

In the general vicinity of the subject property, suburban agricultural, business and residential zones are common. The properties to the immediate north, south, and east of the subject property are similarly zoned 'SAG-10 Suburban Agriculture'. West of the property is the City of Kalispell and the properties are zoned 'B-1/PUD,' 'R-4/PUD' and 'R-2/PUD.'

Figure 2: Zoning surrounding the subject property (outlined in red)



E. Summary of Request

The applicant is requesting a conditional use permit for a 'home occupation' in order to utilize a detached accessory structure on the subject property as a showroom for a handmade jewelry business. The review of which is subject to specific guidelines set forth under Section 2.06.080 FCZR regarding criteria for the issuance of a conditional use permit and the performance standards for a home occupation found in Section 5.06 FCZR.

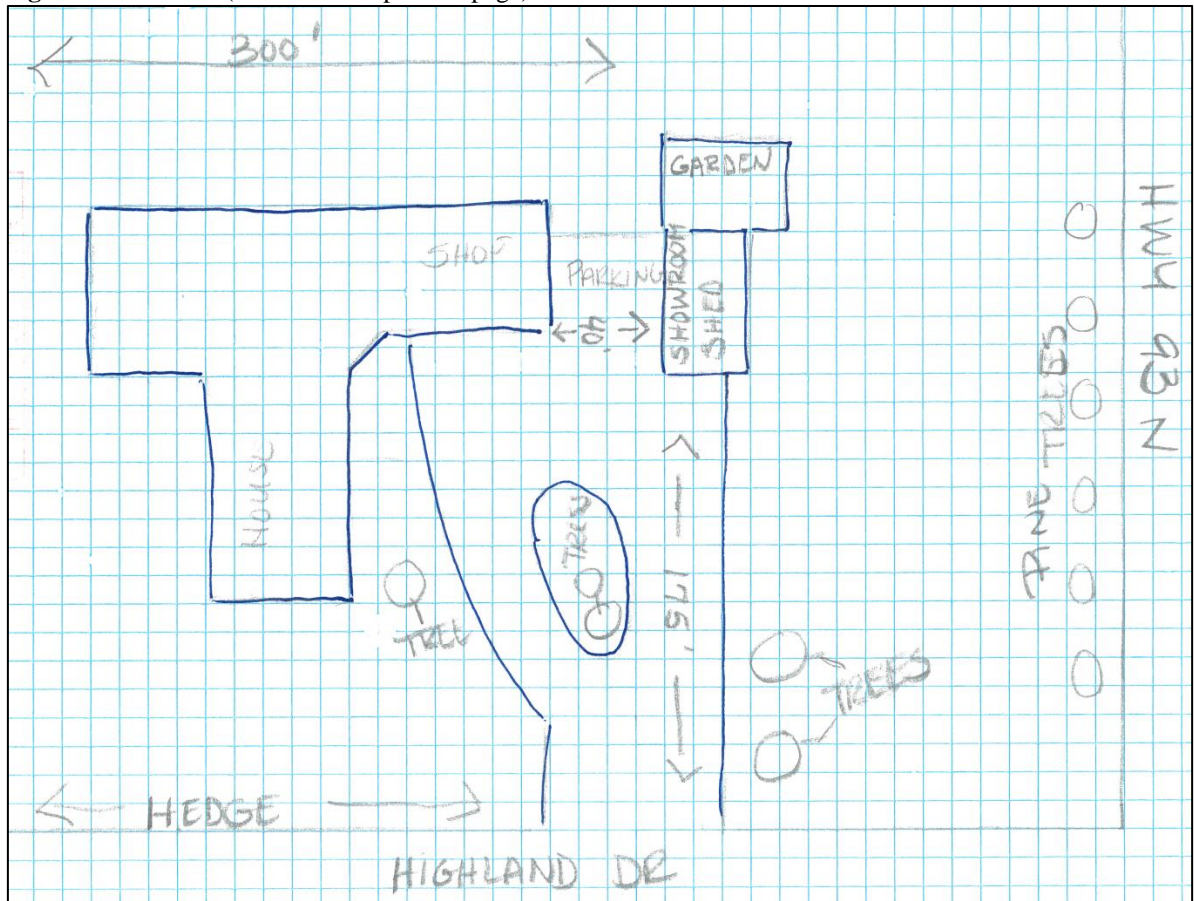
Figure 3: Detached accessory structure for proposed use.



Per Section 7.09.020 a 'Home occupation' is defined as, *"Any use conducted entirely within the dwelling and carried on by the members of the family which use is clearly incidental and secondary to the dwelling for dwelling purposes and does not change the character thereof and in connection therewith are no commodities sold from the premises except that which is produced thereof, except as provided for in Section 5.06. Such uses may include, but are not limited to, art and/or photography studios, computer programming, insurance sales, and handicrafts provided that the use does not involve more than one-third of the total square footage of the dwelling."*

According to the site plan submitted the home occupation would utilize a detached accessory building and is anticipated to have vehicle traffic that exceeds sixteen (16) trips but less than thirty two (32) vehicle trips all day. Therefore, the applicant is requesting a conditional use permit occupation, per Section 5.06.020(2)(B and C).

Figure 4: Site Plan (south at the top of the page)



F. Compliance With Public Notice Requirements

Notification was mailed to property owners within 150 feet of the subject property on August 17, 2016, pursuant to Section 2.06.040(3) of the Flathead County Zoning Regulations. Legal notice of the public hearing on this application will be published in the August 21, 2016 edition of the Daily Interlake.

G. Agency Referrals

Referrals were sent to the following agencies on July 27, 2016:

- Flathead County Solid Waste (FCSW)
 - Reason: The property is located within the department's jurisdiction and has the potential to impact county facilities.
- West Valley Fire District
 - Reason: The property is located within the department's jurisdiction and has the potential to impact West Valley Fire Department response times.
- Flathead City-County Environmental Health Department
 - Reason: The property is located within the department's jurisdiction.
- Flathead County Road and Bridge Department
 - Reason: The property is located within the department's jurisdiction and could impact County infrastructure.
- State Building Department
 - Reason: The applicant is proposing to use an existing building for commercial use and modification may be required to meet state building codes for a commercial structure.

- Flathead County Weeds and Parks Department
 - Reason: The property is located within the department’s jurisdiction and new activity could lead to the development of weeds on the subject property.
- Bonneville Power Administration
 - Reason: The BPA has requested a copy of all agency referrals.

III. COMMENTS RECEIVED

A. Public Comments

To date, no written public comments have been received. It is anticipated any individual wishing to provide verbal comment on the proposal will do so during the public hearing scheduled for September 6, 2016. Any written comments received following the completion of this report will be provided to the Board and summarized during the public hearing.

B. Agency Comments

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Bonneville Power Administration
 - Comment: “In reviewing the proposed plan, it appears this request will not affect any BPA facilities located within this area. BPA does not have any objections to the approval of this request at this time” Email dated August 1, 2016.
- Flathead City-County Health Department
 - Comment: “We have no objection to the proposed showroom for handmade jewelry located at 120 Highland Drive, Kalispell. The proposed use complies with the existing septic permits and approved use of the property evaluated by Environmental Health Services.” Letter dated August 11 ,2016
- Flathead County Road and Bridge Department
 - Comment: “At this point the County Road Department does not have any comments on this request.” Letter dated August 1, 2016

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Sections 2.06.080 and 2.06.100 of the Flathead County Zoning Regulations, the following are criteria required for consideration of a Conditional Use Permit and suggested findings of fact based on review of each criterion.

A. Site Suitability

i. Adequate Usable Space

The subject property currently contains a house, an attached garage, and a detached shed/outbuilding. The applicant is applying to use the outbuilding for the home occupation. The lot is approximately 4.8 acres and zoned SAG-10, Suburban Agriculture. The existing outbuilding on the property is 12 feet by 24 feet and covers approximately 288 square feet. The applicant states the shed would be used as a “showroom to show products and a place to discuss custom made items.”

The minimum yard setbacks for detached structures within SAG-10 are 20 feet from the front and 5 feet from both the side and rear. The existing building appears to meet applicable setback requirements, based on staff site visit and the submitted site plan.

ii. Adequate Access

The subject property is located off of Highland Drive. Highland Drive is a graveled, 27 foot wide, two lane local county road within a 60 foot easement. Access is via a private 20 foot wide driveway off of Highland Drive. The driveway provides adequate site distance and width for the use. Customers accessing the showroom would only utilize the gravel road for approximately 200 feet before turning onto a paved driveway.

Outlined in Section 6.16 FCZR are street and roadway standards for “access to businesses, service stations, roadside stands, public parking lots and all other business requiring motor vehicle access shall meet the requirements as hereinafter provided or as applicable of the Montana Department of Transportation or Flathead County Road and Bridge Department (whichever requirements are more stringent).” According to the standards “No roadway shall be less than 10 feet wide for one-way traffic, or 20 feet wide for two-way traffic” [FCZR 6.16.020(3)]. The required 20 foot wide roadway for two way traffic appears to be met.

Figure 5: Access via private driveway, Highland Drive on the left



iii. Absence of Environmental Constraints

The subject property is relatively flat with no significant elevation changes and is located on FEMA FIRM panel 30029C1415J. The lot is designated as un-shaded Zone X. The un-shaded Zone X is classified as an area determined to be outside the 0.2% annual chance floodplain. There are no wetlands, streams, or creeks located on the property, and there appears to be no other environmental constraints.

Finding #1: The site appears suitable for the home occupation because the existing structures meet applicable dimensional requirements, the lot size is legally non-conforming, it appears to have adequate access via a gravel local road, and the property appears to be absent of environmental constraints.

B. Appropriateness of Design

i. Parking Scheme

The driveway and parking area are paved. Section 6.09.010 FCZR requires 2 parking spaces per dwelling unit and Section 6.09 FCZR requires 1 parking space per 300 square feet of gross floor area for retail stores. The shed that will be used as a showroom is 288 square feet and the property currently contains a single family

dwelling. At minimum, 3 parking spaces are required for the home based business and dwelling unit. Based on parking plan, there is 40 foot by 30 foot area for parking that is adequate in the existing driveway.

Figure 6: Parking area



ii. Traffic Circulation

The subject property is located off of Highland Drive. Highland Drive is a graveled, 27 foot wide, two lane local county road within a 60 foot easement. The existing loop driveway will be utilized by the home occupation. The existing approach is off of Highland Drive and as the applicant states regarding the driveway “enter on the right exit around circular drive. Exit on the left.” The existing access would continue to provide ingress and egress to the property. The driveway is 20 feet wide and appears to meet FCPZ standards.

iii. Open Space

The subject property currently contains a residence, an attached shop/garage and a detached shed/outbuilding. The lot is approximately 4.8 acres. The minimum lot size in a SAG-10 zoning designation is 10 acres. The 4.8 acre lot predates zoning and is considered legally non-conforming. In the SAG-10 zoning designation the permitted lot coverage is 20%. The detached ‘showroom/shed’ that will be used for the home occupation on the property is 12 feet by 24 feet and covers approximately 288 square feet. Based upon staff’s site visit and the submitted site plan, it appears the subject property has adequate open space and complies with zoning.

Finding #2: The parking, traffic circulation, and open space, appears to be adequate for the proposed use because the gravel parking area appears to meet applicable parking standards, allow for adequate traffic circulation, and has adequate open space.

Fencing/Screening

The applicant indicates there is currently fencing around the garden and there is a hedge on the roadside of the property. There is no plan to add any more fencing and/or screening to the property. The zoning designation and home occupation standards do not require any fencing or screening. All fencing constructed shall comply with Section 5.04 FCZR.

iv. Landscaping

No landscaping is required for the home occupation based on the applicable performance standards. The subject property is currently used as personal space and is landscaped similar to single family dwellings in the vicinity.

v. Signage

Section 5.06.020(1)(B)FCZR of the home occupation performance standards states, “*Exterior signs shall be restricted to those permitted in the district in which the home occupation is located.*” The applicant is not proposing any signage associated with the home occupation. The sign standards are outlined in Section 5.11.040(1) *Permitted signs in AG-80, AG-40, AG-20, SAG-10, SAG-5, CCC-1, AND CCC-2.* The applicant would be permitted to have “*One freestanding sign plus one wall sign for each place of business; the sign area shall not exceed 40 square feet*” per Section 5.11.040(1)(B) FCZR. The applicant would also be allowed “*Up to eight rural direction signs per property on a signpost not to exceed 12 feet in height.*” per Section 5.11.040(1)(C) FCZR. All signage constructed on the subject property would be required to be in compliance with Section 5.11.020 as well as Section 5.11.040(1) FCZR. Additionally, the applicant will submit an affidavit stating the home occupation will comply with this criterion.

vi. Lighting

Only minimal yard lighting associated with rural residential uses is present on the subject property. The applicants do not operate their business outside or in the evening and do not propose any additional lighting. Any additional exterior lighting would be required to comply with the performance standards outlined in FCZR Section 5.12, which require that, “*All porch and yard lighting shall be hooded, screened or directed in a manner such that the light source or the diffuser emitting the light shall not be deleterious to the adjoining property owners or occupants.*”

Finding #3 – The signage and lighting on the subject property appear adequate because the applicant is willing to adhere to Flathead County zoning regulations regarding signage and lighting.

C. Availability of Public Services and Facilities

i. Sewer

The home based business will utilize the current restroom located within the single family dwelling. The house is served by an approved septic system. Comments from the Flathead County Environmental Health Department state, “We have no objection to the proposed showroom for the handmade jewelry located at 120 Highland Drive, Kalispell. The proposed use complies with the existing septic permits and approved use of the property evaluated by Environmental Health Services.” No water service is proposed for the shop. Employees and customers will utilize the restrooms within the single family dwelling.

ii. Water

The applicant is proposing to utilize an existing individual well for the dwelling and the home occupation. Water is provided by a private well. The proposed use of the property for jewelry showroom is not a use that requires water consumption beyond what is typical of a single family residence.

iii. Storm Water Drainage

Currently storm water run-off is handled through on-site absorption and will continue to be handled through on-site absorption in the future. The applicant shall contact the

Flathead City-County Environmental Health Department to determine if review will be required.

Finding #4 – The proposed use would have no impact on public water and sewer utilities because the subject property currently utilizes individual water and septic systems, and the Flathead City-County Health Department has no objections to the issuance of the conditional use permit.

iv. Fire Protection

The subject property is served by the West Valley Fire District, and is located approximately 2.1 miles northwest of an existing fire station. Due to the close proximity to the fire station, it is anticipated response times in the event of an emergency would be reasonable.

v. Police Protection

The property would be served by the Flathead County Sheriff's Department. The application states, The Sheriff's Office is located in Kalispell and depending on the number of officers on duty and where they are at any given time will dictate the response time. The small jewelry would likely have minimal impact on the Flathead County Sheriff's Offices.

vi. Streets

The subject property is located on and accessed from Highland Drive. Highland Drive is a graveled, 27 foot wide, two lane county collector road within a 60 foot easement. Comment from the Flathead Road and Bridge Department states, "At this point the County Road Department does not have any comments on this request." It appears that the road is adequate to serve the proposed use.

Finding #5 – The proposed use appears to have acceptable impacts on streets, and police and fire protection because the West Valley Fire Department and Flathead County Sheriff could provide services to the subject property with an acceptable response time and the property is accessed by Highland Drive.

D. Immediate Neighborhood Impact

i. Excessive Traffic Generation

The subject property is located on Highland Drive, accessed from Highway 93. The existing approach is off of Highland Drive and there is drive thru access on the lot. The existing access would continue to provide ingress and egress to the property. The Flathead County Zoning Regulations allow up to 16 vehicle trips per day. Traffic generated by the proposed use would have a minimal impact on the neighborhood if the daily trips were kept under the threshold of 32 vehicle trips per day. The applicant anticipates approximately 20 trips per day to the handmade jewelry showroom, maximum.

ii. Noise or Vibration

The application states, "This type of business which is just a showroom would not create any noise" It is anticipated that the proposed home occupation would not generate noise and vibrations.

Dust, Glare or Heat

The proposed use is not anticipated to create any dust, heat, or glare that would adversely impact the neighborhood. The driveway and parking lot is paved and low speeds are expected on these surfaces. This would not be out of character for the neighborhood because vehicles are expected to travel at slow speeds on the driveway.

Smoke, Fumes, Gas, or Odors

The applicant states, no smoke, fumes, gas or odors will be generated by the proposed use. It is anticipated no smoke, fumes, gas or odors are to be generated by the proposed home occupation other than those typical of a residential neighborhood.

Finding #6: The immediate neighborhood impact from the proposed use is acceptable because the proposed facility will not create excessive traffic, noise, vibration, dust, glare, heat, smoke, fumes, gas or odors other than those typical of a residential area.

iii. Inappropriate Hours of Operation

The proposed hours of operation for the jewelry showroom are Monday through Friday 10:00 am to 6:00 pm and by appointment on Saturdays. The applicant states, "During the week people have to call to come over to look at items during business hours. On Saturdays, they have to have an appointment." The property is located in a residential area however the proposed hours of operation would be normal business hours and unlikely to impact the immediate neighborhood.

Finding #7 – The proposed hours of operation for access to the subject property for the proposed use are not anticipated to negatively impact the neighborhood because the proposed hours of operation would be between 10:00 am and 6:00 pm.

E. 'Home Occupation' Performance Standards

Section 5.06.020 FCZR contains specific performance standards applicable to 'home occupations,' stating "*home occupations are permitted in any dwelling unit, subject to the following provisions:*

1. All home occupations shall comply with the following standards:

A. No outdoor storage shall be permitted.

- The applicant will submit an affidavit stating the home occupation will comply with this criterion.

B. Exterior signs shall be restricted to those permitted in the district in which the home occupation is located.

- The sign standards for the SAG-10 zoning designation is found in Section 5.11.040(1) *Permitted signs in AG-80, AG-40, AG-20, SAG-10, SAG-5, CCC-1, AND CCC-2.* The applicant would be permitted to have "*One freestanding sign plus one wall sign for each place of business; the sign area shall not exceed 40 square feet*" per Section 5.11.040(1)(B) FCZR. The applicant would also be allowed "*Up to eight rural direction signs per property on a signpost not to exceed 12 feet in height.*" per Section 5.11.040(1)(C) FCZR. All signage constructed on the subject property would be required to be in compliance with Section 5.11.040(1) FCZR. Additionally, the applicant will submit an affidavit stating the home occupation will comply with this criterion.

C. No home occupation shall be conducted in a manner which will be detrimental to the residential use of said residence or cause a nuisance to surrounding residences, because of vibration, noise, dust, smoke, odor, interference with radio or television reception, or other factors.

- The applicant will submit an affidavit stating the home occupation will comply with this criterion.

D. Any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front or side yard.

- Section 6.02.010 FCZR requires 2 parking spaces per dwelling unit and Section 6.09 FCZR requires 1 parking space per 300 square feet of retail space. The

property currently contains a single family dwelling. The site plan indicates the parking is sufficiently met off the street and behind the single family dwelling. At minimum, 3 parking spaces are required for the home based business and dwelling unit. Based on staff's site visit and site plan, there is adequate parking in the existing driveway.

- E. The home occupation shall not generate pedestrian or vehicle traffic in excess of that which is characteristic of the neighborhood in which it is located. Vehicle traffic would not be increased by more than sixteen (16) vehicle trips all day.*
 - The jewelry showroom anticipates approximately 10 customers per day totaling 20 vehicle trips. 5.06.020(2)(C) indicates that vehicle traffic that exceeds 16 vehicle trips but is kept under 32 vehicle trips is acceptable as long as a conditional use permit is obtained.
- F. No home occupation shall generate as a by-product for disposal or cause to be dumped any hazardous waste including chemicals and cleaners, other than the volume and types that would be normally generated by a typical single-family home.*
 - The jewelry showroom is not expected to produce any hazardous waste other than the volume and type that would normally be generated by a typical single-family home.
 - The applicant will submit an affidavit stating the home occupation will comply with this criterion.
- G. No home occupation shall cause an increase in any one or more utilities so that the combined total use for dwelling and home occupation purposes exceeds the average for residences in the neighborhood.*
 - The applicant will submit an affidavit stating the home occupation will comply with this criterion.

V. SUMMARY OF FINDINGS

1. The site appears suitable for the home occupation because the existing structures meet applicable dimensional requirements, the lot size is legally non-conforming, and it appears to have adequate access via a gravel local road.
2. The parking, traffic circulation, and open space, appears to be adequate for the proposed use because the gravel parking area appears to meet applicable parking standards, allow for adequate traffic circulation, and has adequate open space.
3. The signage and lighting on the subject property appear adequate because the applicant is willing to adhere to Flathead County zoning regulations regarding signage and lighting.
4. The proposed use would have no impact on public water and sewer utilities because the subject property currently utilizes individual water and septic systems, and the Flathead City-County Health Department has no objections to the issuance of the conditional use permit.
5. The proposed use appears to have acceptable impacts on streets, and police and fire protection because the West Valley Fire Department and Flathead County Sheriff could provide services to the subject property with an acceptable response time and the property is accessed by Highland Drive.
6. The immediate neighborhood impact from the proposed use is acceptable because the proposed facility will not create excessive traffic, noise, vibration, dust, glare, heat, smoke, fumes, gas or odors other than those typical of a residential area.
7. The proposed hours of operation for access to the subject property for the proposed use are not anticipated to negatively impact the neighborhood because the proposed hours of operation would be between 10:00 am and 6:00 pm.

VI. CONCLUSION

Upon review of this application, the request to allow for conditional use permit for a 'home occupation' that utilizes outbuildings or accessory structures on the subject property is generally supported by the review criteria and the Findings of Fact listed above. Should the Flathead County Board of Adjustment choose to adopt staff report FCU-16-09 as Findings of Fact and approve the conditional use permit, the following conditions would ensure compliance with the review criteria and appropriate measures to mitigate impacts:

VII. CONDITIONS OF APPROVAL

1. The 'home based business' on the subject property shall be in substantial conformance with the application materials and site plan as submitted and approved by the Board of Adjustment and modified by the conditions below [FCZR Section 2.06.010].
2. The applicant shall provide an affidavit stating the home based business will comply with the criteria outlined in FCZR Section 5.06.020.
3. Changes or modifications to the approved use or the site plan shall not be affected unless specifically approved in writing by the Flathead County Board of Adjustment [FCZR Section(s) 2.06.010 and 2.06.020].
4. All fencing installed on the property shall be in compliance with Section 5.04 of the Flathead County Zoning Regulations.
5. Current and future lighting installed on the property shall be in compliance with Section 5.12 of the Flathead County Zoning Regulations.
6. All structures shall be located in accordance minimum setback requirements for structures of the SAG-10, Suburban Agriculture zoning designation, pursuant to Section 3.08.040 of the Flathead County Zoning Regulations.
7. The applicant shall provide 2 parking spaces for the one-family dwelling as required under Section 6.02.010 and 1 space per 300 square feet of retail space, per Section 6.09.010 of the Flathead County Zoning Regulations.
8. The home occupation shall not generate pedestrian or vehicle traffic in excess of that which is characteristic of the neighborhood in which it is located. Vehicle traffic shall not be increased by more than thirty-two (32) vehicle trips all day, per 5.06.020(2)(C).
9. Hours of operation, including times of delivery shall not exceed normal business hours and shall occur between 10:00 am and 6:00 pm Monday through Saturday.
10. The conditional use permit shall terminate twelve (12) months from the date of authorization if commencement of the activity has not begun, unless the applicant can demonstrate and maintain a continuous effort in good faith in commencing the activity. [FCZR Section 2.06.060].
11. At the end of 12 months from the date of authorization of this permit staff will inspect to verify compliance [FCZR Section 2.06.060].

Planner: KN